

ORDER NO. 1882

UNITED STATES OF AMERICA  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;  
Robert G. Taub, Vice Chairman;  
Mark Acton; and  
Nanci E. Langley

Market Dominant Product Prices  
Inbound Market Dominant Multi-Service Agreements  
with Foreign Postal Operators 1  
Canada Post Corporation – United States Postal  
Service Bilateral Agreement (MC2010-35)  
Negotiated Service Agreement

Docket No. R2014-3

NOTICE AND ORDER CONCERNING CANADA POST CORPORATION  
NEGOTIATED SERVICE AGREEMENT

(Issued November 19, 2013)

I. INTRODUCTION

*Background.* On November 15, 2013, the Postal Service filed notice, pursuant to 39 CFR 3010.40 *et seq.*, announcing that it has entered into a bilateral agreement (Agreement) with Canada Post Corporation (Canada Post), along with a Type 2 rate adjustment.<sup>1</sup> It asks that the Commission include the Agreement within the Inbound Market-Dominant Multi-Service Agreements with Foreign Postal Operators I (MC2010-35) product on grounds of functional equivalence.

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<sup>1</sup> Notice of United States Postal Service of Type 2 Rate Adjustment, and Notice of Filing Functionally Equivalent Agreement, November 15, 2013 (collectively, Notice).

## II. THE POSTAL SERVICE'S FILINGS

*Compliance with filing requirements.* In addition to the Notice, the Postal Service filed an application for non-public treatment of materials filed under seal (Attachment 1); a redacted copy of the Canada Post Agreement (Attachment 2), filed separately;<sup>2</sup> and a redacted Excel file with supporting financial documentation. Notice at 2. The Postal Service also filed unredacted copies of the Agreement and the supporting financial documentation under seal. *Id.* On November 18, 2013, the Postal Service filed with the Commission the non-public version of the relevant portion of the bilateral agreement and financial workpapers.<sup>3</sup>

The Agreement is the successor agreement to one previously found to be functionally equivalent to the Inbound Market-Dominant Multi-Service Agreements with Foreign Postal Operators I (MC2010-35).<sup>4</sup> Notice at 1. The Postal Service identifies Canada Post, the postal operator for Canada, and the Postal Service as the parties to the Agreement. *Id.* at 3.

The Postal Service states that the Agreement includes negotiated pricing and settlement for various inbound letter-post products, including International Business Reply Service (IBRS), registered mail, and small packets with delivery confirmation. *Id.* It asserts that the Agreement will not only improve financial performance over default Universal Postal Union (UPU) rates, but will also continue to improve operational

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<sup>2</sup> The Postal Service initially filed Notice of United States Postal Service of Filing Attachment 2 to Notice of Type 2 Rate Adjustment, and Notice of Filing Functionally Equivalent Agreement, November 15, 2013. It later filed United States Postal Service Notice of Filing of Replacement Attachment 2 to Notice of Filing Type 2 Rate Adjustment – Errata, November 18, 2013 (Attachment 2). For purposes of Commission review, the most recent filing of Attachment 2, submitted November 18, 2013, will be used in its review.

<sup>3</sup> See Notice of the United States Postal Service of Non-Public Filing of Agreement and Financial Workpapers, November 18, 2013. The Postal Service contemporaneously filed a motion for late acceptance. See Motion for Late Acceptance of Non-Public Filing of Agreement and Financial Workpapers, November 18, 2013. This motion is granted.

<sup>4</sup> See Docket No. R2012-5, Order No. 1078, Order Concerning Rate Adjustment for Bilateral Agreement with Canada Post Negotiated Service Agreement, December 27, 2011. See *also* Docket No. R2012-5, Order 1611, Order Concerning Amendment to Bilateral Agreement with Canada Post Negotiated Service Agreement, January 7, 2013.

performance. *Id.* at 3-4. The Postal Service indicates that, with the inclusion of IBRS, Canada Post customers sending items to recipients in the United States will enable those recipients to return the items prepaid. *Id.* at 4.

The Postal Service identifies January 1, 2014 as the intended effective date; states that its Notice provides the requisite advance notice; identifies a Postal Service official as a contact person; provides financial data and information in the redacted workpapers; describes expected operational improvements; and addresses why the Agreement will not result in unreasonable harm to the marketplace. *Id.* at 2-6. The intended expiration date is December 31, 2015, unless terminated sooner with at least 90 days' written notice by either party. Attachment 2 at 7-8.

*Data collection and performance reporting proposals.* The Postal Service proposes that no special data collection plan be created for the Agreement because it intends to report information on the Agreement through the Annual Compliance Report. *Id.* at 7. With respect to performance measurement, the Postal Service asks that it be excepted from separate reporting under 39 CFR 3055.3(a)(3) based on Order No. 966.<sup>5</sup> Notice at 7.

*Statutory criteria.* The Postal Service states that under 39 U.S.C. 3622(c)(10), the criteria for Commission review are whether the Agreement (1) improves the Postal Service's net financial position or enhances performance of operational functions; (2) will not cause unreasonable harm to the marketplace; and (3) will be available on public and reasonable terms to similarly situated mailers. *Id.* It states that it addresses the first two criteria in its Notice and views the third criterion as inapplicable, given Canada Post's status as the designated operator for Letter Post originating in Canada. *Id.*

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<sup>5</sup> In Order No. 996, the Commission granted the Postal Service's request for a standing exemption to performance reporting requirements for all contracts that fall within the parameters of the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operations 1 product. See Docket No. R2012-2, Order No. 996, Order Concerning an Additional Inbound Market Dominant Multi-Service Agreement with Foreign Postal Operators 1 Negotiated Service Agreement, November 23, 2011, at 7.

*Functional equivalence.* The Postal Service notes that in Order No. 1864, the Commission requested that it put forth a proposal for identification of the appropriate baseline for comparison of agreements for functional equivalency purposes.<sup>6</sup> Notice at 8. The Postal Service states that the Agreement is the substantive equivalent to the predecessor agreement with Canada Post, which was included within Inbound Market Dominant Multi-Service Agreement with Foreign Postal Operators 1 product grouping. *Id.* It also states that the terms of the Agreement fit within the proposed Mail Classification Schedule (MCS) language for Inbound Market-Dominant Multi-Service Agreements with Foreign Postal Operators 1 and will conform to a common description. *Id.* at 8-9. The Postal Service asserts that in comparison with its predecessor, cost characteristics and the financial models used to project costs and revenues are the same as the predecessor agreement. *Id.* at 9. It states that while minor differences exist, they mostly reflect a reorganization of terms, but make no actual changes to the terms. *Id.* The Postal Service states that none of these differences detracts from the conclusion that the Agreement is functionally equivalent to its predecessor agreement. *Id.*

### III. COMMISSION ACTION

The Commission, in conformance with rule 3010.44, establishes Docket No. R2014-3 to consider matters raised by the Notice. The Commission invites interested persons to submit comments on whether the Notice is consistent with the policies of 39 U.S.C. 3622 and 39 CFR part 3010.40. Comments are due no later than December 2, 2013.<sup>7</sup>

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<sup>6</sup> Docket No. R2013-9, Order No. 1864, Order Approving an Additional Inbound Market Dominant Multi-Service Agreement with Foreign Postal Operators 1 Negotiated Service Agreement (with Korea Post), October 30, 2013. In response, the Postal Service filed a motion for partial reconsideration. See Docket No. R2013-9, Motion of Partial Reconsideration of Order No. 1864, November 6, 2013.

<sup>7</sup> Due to the Notice's filing date and considering the Agreement's effective date, the Commission finds it appropriate to extend the comment period prescribed in 39 CFR 3010.44(a)(5) to December 2, 2013.

The public portions of the Postal Service's filings have been posted on the Commission's website. They can be accessed at <http://www.prc.gov>. Information on how to obtain access to non-public material is available at 39 CFR part 3007.

The Commission appoints Katalin K. Clendenin to serve as Public Representative in this proceeding.

#### IV. ORDERING PARAGRAPHS

*It is ordered:*

1. The Commission establishes Docket No. R2014-3 to consider matters raised by the Notice of United States Postal Service of Type 2 Rate Adjustment, and Notice of Filing Functionally Equivalent Agreement, filed November 15, 2013.
2. Pursuant to 39 U.S.C. 505, Katalin K. Clendenin is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.
3. Comments by interested persons are due no later than December 2, 2013.
4. The Secretary shall arrange for publication of this Order in the *Federal Register*.

By the Commission.

Ruth Ann Abrams  
Acting Secretary